HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Appeal No.781 of 2006

Between:

The Deputy Commissioner of Prohibition & Excise, Karimnagar and others

... Appellants

And

Ch.Muthaiah

... Respondent

::JUDGMENT::

Counsel for the appellants: Government Pleader for Prohibition and Excise

Counsel for the respondent: Sri K. M. Mahinder Reddy

July 21, 2006

Per G.S. Singhvi, CJ

Whether 60.11 quintals of black jagerry belonging to the respondent M/s. Chidura Muthaih and Company could be confiscated by Deputy Commissioner, Prohibition and Excise, Karimnagar (for short 'the Deputy Commissioner') by invoking the provisions of Sections 45 and 46 of Andhra Pradesh Excise Act, 1968 (for short 'the 1968 Act') is the question which arises for determination in this appeal filed under Clause 15 of the Letters Patent for setting aside order dated 7-12-2005

passed by the learned Single Judge in Writ Petition No.16379 of 2005 whereby she quashed the confiscation of black jaggery.

The Facts:

The respondent is engaged in the business of agricultural products like paddy, maize, jaggery etc. It is said to have sold 60.11 quintals of jaggery on credit to Laxmi Kirana Merchants, Kataram, Karimnagar District. The jaggery was transported in a hired Eicher van bearing Registration No. AP – 25 T – 8212. The vehicle was seized by the Station House Officer, Prohibition and Excise Station, Mancherial, Adilabad District on the premise that the jaggery was intended to be used for manufacturing I.D liquor. After two months, the Deputy Commissioner issued notice dated 20-1-2004 to the respondent requiring it to show cause against the proposed confiscation of the jaggery and vehicle used for its transportation on the ground of violation of Section 34 (e) read with Sections 45 and 46 of the 1968 Act. In the notice, it was alleged that the jaggery was being transported to Burgupalli Thanda, Mancherial Mandal of Adilabad District for the purpose of manufacturing intoxicant. In its reply dated 25-3-2004, the respondent took up the stand that the jaggery in question was sold on credit to Laxmi Kirana Merchants, Kataram and it was being transported with all valid documents. After considering the same, the Deputy Commissioner passed order dated 27-5-2004 for confiscation of the black jaggery and vehicle. The appeal preferred against the order of confiscation was dismissed by the Commissioner, Prohibition and Excise, Andhra Pradesh vide his order dated

11-2-2005. Paragraphs 5 and 6 of that order are reproduced below:

> "5. A perusal of the records reveals that the vehicle was involved in transportation of 60.11 quintals of Black Jaggery. As per way bill, the consignment of 60.11 quintals of jaggery was to be transported from Kamareddy to M/s.Laxmi Kirana Merchant, Kataram of Karimnagar District. But, the vehicle was caught by

the Prohibition & Excise Inspector, Mancheryal while transporting 60.11 quintals of black jaggery in 190 gunny bags in the limits of Burugupally Thanda, Jaipur Mandal, Adilabad District. The consignment was diverted instead of taking to the destination covered under the bills, therefore, the contention that the driver was new and lost the way is not tenable and only created to escape the liability. The way bill issued by the Commercial Tax Department relates to jaggery but not black jaggery, hence the contention that the contraband was covered with valid bills is not tenable. The accused Srinivas in the panchanama stated that he was transporting the jaggery for supplying to the I.D. manufacturers. All the circumstances clearly proves that the black jaggery was being transported for supplying to I.D. manufacturers.

6. The Full Bench of the Hon'ble High Court in W.P.No.19706/2000 held that the authorities can register a case U/s.34 (e) of A.P. Excise Act, 1968, if it is reasonably believed that the Black Jaggery is meant for preparation of I.D. Liquor. The Chemical Examiner analysed samples and reported that the sample contains sugars and extraneous matter. It is jaggery fit for fermentation producing alcohol unfit for consumption. The Sub-Divisional Proh. & Excise Officer reported that the Burugupalli Thanda is notorious for illicit distillation and that the accused were transporting the black jaggery to the I.D. Distillers of Burugupalli Thanda."

The respondent challenged the appellate order in Writ Petition No.9492 of 2005. The same was disposed of by the learned Single Judge on 26-4-2005 with a direction to the Commissioner to reconsider the case of the writ petitioner in accordance with Para 4 (iii) of Circular No.4294/DPE/2001/CS dated 3-11-2002. Thereafter the Deputy Commissioner, passed order dated 30-6-2005 whereby he held that the case of respondent does not fall within the parameters of Para 4 (iii) of Circular dated 3-11-2002 because the consignment was diverted with a mala fide intention of supplying the black jaggery to the I.D. liquor manufacturers of Burugupally Thanda, which is notorious for distillation

of I.D. liquor.

Aggrieved by the refusal of the Deputy Commissioner to release the jaggery, the respondent filed Writ Petition No.16379 of 2005. In the affidavit filed by the representative of the petitioner Shri Chidura Raji Reddy, it was pleaded that the jaggery was sold to a bona fide purchaser under valid documents and, therefore, the Deputy Commissioner did not have the jurisdiction to confiscate the same. It was further pleaded that there was no basis for recording a finding that the jaggery in question was meant to be used for manufacture of I.D. liquor.

In the counter-affidavit filed by Shri M. Mohan Reddy, Assistant Prohibition & Excise Superintendent, Mancherial, it was averred that the black jaggery and van were seized by the Station House Officer, Mancherial at the outskirts of Burugupally Thanda, Jaipur Mandal. The jaggery was meant to be transported from Kamareddy to Kataram, but it was found near Burugupally Thanda of Adilabad District. On interrogation, the servant of the consignor, namely, G. Srinivas, who accompanied the consignment disclosed that on reaching Godavarikhani, he received telephonic message on cell phone from Sammi Reddy resident of Bheemaram who instructed to bring the consignment to Burgupally Thanda by saying that he will be waiting at Godavari Bridge. However, when the van reached the bridge, Sammi Reddy was not found and, therefore, the consignment was being supplied to I.D. manufacturers in Burugupally Thanda. Sri G. Srinivas disclosed that on an earlier occasion also he supplied black jaggery in Burugupally Thanda to I.D. manufacturers. Shri M.Mohan Reddy further averred that as per Rc.No.A/2/04 dated 21-2-2004 sent by Sub-Divisional Prohibition and Excise Officer, Mancherial, the black jaggery was meant to be supplied to I.D. manufacturers at Burugupally Thanda. Therefore, it was confiscated after giving notice and opportunity of

hearing to the consignor. According to Shri Mohan Reddy, the chemical analysis of the sample of black jaggery revealed that it contained material fit for manufacture of intoxicant.

In the reply affidavit filed by him, Shri Chiduri Raji Reddy reiterated that the consignment of jaggery could not have been confiscated because the same was not meant for manufacture of intoxicant. In an additional affidavit dated 23-11-2005 filed by him, Shri Chiduri Raji Reddy pleaded that the Deputy Commissioner had deliberately refused to release the jaggery and vehicle though in similar cases order of release had been passed.

The learned Single Judge relied on the judgment of a Single Bench in **Ulli Bhaskar v. State of A.P.**[1] and held that mere possession of black jaggery even with an intention to manufacture illicit liquor cannot be treated as an offence under Section 34 (e) and, therefore, the confiscation of jaggery is legally unsustainable.

Learned Government Pleader for Prohibition and Excise assailed the order under challenge and argued that the learned Single Judge committed a serious error by nullifying the order of confiscation without even recording a finding that the same suffers from any jurisdictional infirmity or error of law apparent on the face of the record. She further argued that the ratio of the Full Bench judgment in **Ganesh Traders v. District Collector, Karimnagar**[2] is squarely applicable to the case of the respondent and the Deputy Commissioner did not commit any illegality by ordering confiscation of the black jaggery because the same was intended to be used for manufacture of intoxicant. She also pointed out that the plea set up by the respondent about mistaken diversion of the route by the driver was rightly rejected by the Deputy Commissioner because the route from Kamareddy to Kataram is on the southern side of Karimnagar whereas Burugupally Thanda in Jaipur

Mandal of Adilabad District is on northern side. The learned Government Pleader argued that the interpretation placed by the learned Single Judge on Section 34 (e) in **Ulli Bhaskar v. State of A.P.** (supra) runs contrary to the majority of the Full Bench judgment in **Ganesh Traders v. District Collector, Karimnagar** (supra) and, therefore, the same could not have been made basis for nullifying the order of confiscation.

Learned counsel for the respondent supported the impugned order and argued that the action of the respondents to confiscate black jaggery was per se illegal and arbitrary. He submitted that the jaggery was sold to a bona fide purchaser and was not meant for manufacture of intoxicant.

We have thoughtfully considered the respective submissions. Section 13, which contains prohibition against manufacture etc. of excisable articles, Section 34, which prescribes penalties for illegal import, export, transport, manufacture etc. of intoxicants in violation of the provisions of the Act, Sections 45 and 46, which deal with confiscation of certain things, read as under:

> "**13. Manufacture etc., of excisable articles prohibited except under a licence:**
>
> (1) No person shall, _
>
> (a) manufacture or collect an intoxicant;
> (b) cultivate hemp plant;
> (c) tap an excise tree or draw toddy from any such trees;
> (d) construct or work a distillery or brewery;
> (e) bottle liquor for sale; or
> (f) use, keep or have in his possession, any materials, stills, utensils, implements of apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy; except under the authority and subject to the terms and conditions of a licence granted by such officer, not below the rank of an Excise Superintendent, as may be prescribed :

Provided that the provisions of this sub-section insofar as they relate to establishing, continuing or licensing a distillery shall apply only to those distilleries which manufacture spirits for potable purpose and regulatory provisions relating to regulation and supervision, shall be applicable to all distilleries.

(2) A licence granted under this section shall extend and cover servants and other persons employed by the licensee and acting on his behalf.

(3) Notwithstanding anything in sub-section (1) the Government may, by notification, direct that in such areas as may be specified therein it shall not be necessary to take out a licence for the manufacture of liquor for bona fide home consumption of the manufacturer.

34. Penalties for illegal import etc.

Whoever, in contravention of this Act or of any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under this Act,_

(a) imports, exports, transports, manufactures, collects or possesses or sells any intoxicant; or

(b) taps any excise tree; or

(c) draws toddy from any excise tree; or

(d) constructs or works any distillery or brewery; or

(e) uses, keeps, or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy; or

(f) bottles any liquor for purposes of sale; or

(g) buys any intoxicant; or

(h) possesses any material or film either with or without Government logo of any district in the State of Andhra Pradesh or any other State or wrapper or any other thing in which intoxicants can be packed or any apparatus, or implement or machine for the purpose of packing any intoxicant;

(i) removes any intoxicant from any distillery, brewery or warehouse licenced, established or continued under this Act; shall on conviction be punished :

(1) in the case of an offence falling under clause (a),_

(i) where the intoxicant involved in the offence is less than

such quantity as may be notified in this behalf with imprisonment for a term which shall not be less than six months but which may extend upto three years and with fine which shall not be less than rupees five thousand but which may extend upto rupees twenty thousand;

(ii) where the intoxicant involved in the offence is not less than the quantity notified as aforesaid with imprisonment for a term which shall not be less than one year and which may extend upto five years and with fine which shall not be less than rupees ten thousand but which may extend upto rupees one lakh; and

(2) in the case of an offence other than an offence falling under clause (a) with imprisonment which shall not be less than six months but which may extend to one year and with fine which may extend upto rupees ten thousand.

45. Liability of certain things to confiscation:

Whenever any offence has been committed, which is punishable under this Act, following things shall be liable to confiscation namely:

(1) any intoxicant, materials, still, utensil, implements or apparatus in respect of or by means of which such offence has been committed;

(2) any intoxicant lawfully imported, transported, or manufactured, had in possession, sold or bought along with, or in addition to, any intoxicant liable to confiscation under clause (1); and

(3) any receptacle, package, or covering in which anything liable to confiscation under clause (1) or clause (2) is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same; [x x x x]

46. Confiscation by Excise Officers in certain cases:

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under Section 45 is seized or detained under the

provisions of this Act, the Officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the Deputy Commissioner of Prohibition and Excise who has jurisdiction over the area.

(2) On production of the said seized property under sub-section (1) the Deputy Commissioner of Prohibition and Excise if satisfied that an offence under this Act has been committed, may, whether or not a prosecution is instituted for the commission of such an offence, order confiscation of such property.

(3) While making an order of confiscation under sub-section (2), the Deputy Commissioner of Prohibition and Excise may also order that such of the properties to which the order of confiscation relates which in his opinion cannot be preserved or are not fit for human consumption be destroyed.

(4) Where the Deputy Commissioner of Prohibition and Excise after passing an order of confiscation under sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction or dispose of departmentally.

(5) The Deputy Commissioner of Prohibition and Excise shall submit a full report of all particulars of confiscation to the Commissioner of Prohibition and Excise within twenty-four hours of such confiscation.

(6) The Deputy Commissioner of Prohibition and Excise shall, for the purposes of this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when making enquiries under this section in respect of the following matters, namely:

(a) receiving evidence on affidavits;
(b) summoning and enforcing the attendence of any person and examining him on oath; and
(c) compelling the production of documents."

An analysis of the provisions reproduced above makes it clear

that manufacture of an intoxicant except under the authority and subject to the terms and conditions of a licence granted by the competent authority is prohibited (Section 13). A person who violates this provision is liable to be convicted and punished (Section 34). Clause (e) of Section 34 declares that whatsoever uses, keeps or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy can be proceeded against and punished. Sections 45 (1) provides for confiscation of any intoxicant, materials, stills, utensils, implements or apparatus in respect of or by means of which any offence has been committed under the Act. Section 45 (2) provides for confiscation of any intoxicant lawfully imported, transported, or manufactured and Section 45 (3) provides for confiscation of any receptacle, package or covering in which anything liable to confiscation under sub-sections (1) and (2) is found. Section 46 (1), which begins with a non-obstante clause, empowers the Deputy Commissioner of Prohibition and Excise to order confiscation of the property which is subject matter of offence.

The above noted provisions came up for consideration before the Full Bench of this Court in **Ganesh Traders v. District Collector, Karimnagar** (supra). By majority, the Full Bench laid down the following propositions:

a) The provisions of the A. P. Excise Act including Sections 13 (f) and 34 (e) should be interpreted with reference to the objects of the Act and penal provisions dealing with excise offences should also receive broader interpretation having regard to the fact that the Excise Act is intended to achieve partially the objective of Article 47 of the Constitution of India;

b) Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer “has reason to believe" that black jaggery (material) is likely

to be used for manufacture of ID liquor the same can be seized and persons can be arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge sheet can be filed under Section 34 (e) of the Excise Act.

c) In a situation such as (a) and (b) above, if the circumstances so warrant the person/accused is entitled to approach under Section 482 of Cr. P. C. and-or Article 226 of the Constitution of India and seek quashing of proceedings provided his case comes within well-settled principles for quashing FIR, charge sheet or criminal case. However, a Writ Petition in such an event at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor.

d) If the FIR shows the ingredients of offence under Section 34 (e) read with Section 13 (f) of the Excise Act, a person cannot be heard to say in High Court that he is carrying on business or transporting black jaggery either because he is an agriculturist or businessman. All such pleas are to be raised before appropriate criminal Court."

Goda Raghuram, J, who constituted the majority, emphasized the need of maintaining the balance between the rights and liberties of the manufacturers and traders and the equally cherished rights to life and healthy existence of the general population, and observed:

> "Even this processed interpretation may be productive of substantive inconvenience to the manufacturers, traders and dealers of "black Jaggery" as it is only on analysis of a specific sample of the material that the conclusion is possible that it is "black Jaggery" that has no other use except potentially for manufacture of an intoxicant. But in my considered view this is not a disproportionate burden on the manufacturers or traders of "black Jaggery" that outweighs the clear and present danger of leaving this material totally unregulated.
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> "Black Jaggery" which has no other legitimate, established or demonstrable purpose and utility except for the manufacture of an intoxicant, is comprehended within the

meaning of the expression “materials" in Sec. 13 (f) and as such is susceptible to the regulatory framework and to the penalties set out in the 1968 Act including Sec. 34 thereunder.

As potential hardship and grave inconvenience would ensue in the absence of a clear prescription as to what constitutes “black Jaggery" within the meaning of the 1968 Act, the State Government is directed to prescribe, by an appropriate instrument, the description, character and composition of “black Jaggery" that would have no other use except for the manufacture of an intoxicant; prescribe procedures for prompt and speedy analysis of “black Jaggery" seized, duly specifying the authority or agency for conduct of such analysis; prescribe the time frame within which the report of such an analysis should be submitted to the regulatory agency and shall further specify that on such report recording that the commodity seized is not “black Jaggery" within the meaning of the 1968 Act as interpreted by this Court above, the seized material and the vehicles carrying the same shall be released forthwith and further proceedings dropped.

As “black Jaggery" in general may include 'black Jaggery" within the meaning of the 1968 Act and as the question is whether a specific sample of Black Jaggery includes “black Jaggery" as comprehended within the meaning of the 1968 Act and as this identification is possible only after the analysis of the sample, I hold that the satisfaction of the regulatory agency/authority under the Act that a specific matrial is “black Jaggery" within the meaning of this Act, would justify the seizure thereof for the purpose of further proceedings, which shall of course, be subject to the result of the analysis.”

V.V.S. Rao, J, who was the other member of the majority, observed:

“Fine quality jaggery is usually golden-yellow to light brown in colour, free from dirt, other extraneous matter like straw or sand and any other material deleterious to health (Indian Standard Specification 12923 of 1990, para 4.1). Black jaggery is not fit for human consumption and being left over residue settled at the bottom after removing fine quality jaggery, consists of a lot of dirt, sand, straw and other harmful materials

deleterious to health. As per a note placed before us by the learned Government Pleader for Excise, black jaggery is mixed with water, molasses and ammonium sulphate. Dangerous chemicals like alum are also added. Fermentation of alcohol is done in unscientific fashion and in unhygenic conditions."

While rejecting the argument that if mere possession of the ingredients like black jaggery used in manufacturing I.D. liquor is made punishable under Section 13 read with Section 34, then it will cause great hardship to lorry transporters and small businessmen who deal in black jaggery, V.V.S.Rao, J observed:

> "If a substance or material including some chemicals 'can only be used' for manufacturing intoxicating substances and nothing else, we fail to understand as to how the principle of res ipsa loquitur is not attracted. Nobody keeps black jaggery only for the sake of keeping. If it is 'reasonably believed" that black jaggery is 'kept' for manufacturing of ID liquor, the authorities can register a case under Section 34 (e) of the Excise Act."

In **Ulli Bhaskar v. State of A.P**., (supra), the learned Single Judge referred to the language of Section 34 (e) of the 1968 Act and held as under:

> "So, it is clear that possession must be "for the purpose of manufacturing of an intoxicant". It is well known that there are four stages in the commission of an offence, i.e., (i) forming an intention to commit the offence, (ii) making preparations therefor, (iii) making an attempt to commit the offence and (iv) actually committing the offence. Since section 34 (e) of the Excise Act speaks about the person being in possession "for the purpose of manufacturing an intoxicant", it is clear that the offence is committed only when 'manufacturing' is going on, and not before the manufacture, because even to constitute an attempt, the act must reveal, with reasonable certainty, in conjunction with other facts and circumstances, and not necessarily in isolation, an

> intention, as distinguished from mere desire or object to commit a particular offence (see State of Maharastra v. Mohd Yakub, AIR 1980 sc 1111 at 1117 and 1118). It is also relevant to mention that in Malkiat Singh v. State of Punjab, AIR 1970 SC 713, the Supreme Court held that the test for determining whether an act of a person constitutes an attempt or preparation is to see whether the overt acts, already done, are such that if the person changes his mind and does not proceed further the acts already done are harmless or not. Therefore, being in possession of black jaggery and alum, even with an intention to manufacture illicit liquor, can by no stretch of imagination, be said to be an offence, because as per the excise Act an offence under Section 34 (e) is committed by a person when he is using the material "for purpose of manufacturing" intoxicant. So, overt act of making preparation for manufacture of an intoxicant (i.e., arrack) with the material is the sine qua non for the act to constitute an offence under Section 34 (e) of the Excise Act."

With great respect to the learned Single Judge, we are unable to approve his interpretation of Section 34 (e) because a wholesome reading of Section 34 (e) shows that the Legislature has designedly made the actual manufacture as well as possession of any materials for the purpose of manufacturing any intoxicant without licence punishable. In other words, if a person is found in possession of any material intended to be used for manufacture of an intoxicant and he does not have the requisite licence, then he can be proceeded under Section 34 read with Sections 45 and 46. It is thus clear that if a person contravenes the provisions of the 1968 Act or of any rule made thereunder, and possesses any material which is intended to be used for the purpose of manufacturing any intoxicant, he can be proceeded against on the ground of violation of Section 34 (e). If the interpretation

placed by the learned Single Judge on the plain language of Section 34 (e) is accepted, then Section 34 (e) will become otiose and redundant. Therefore, keeping in view the well recognized rule of interpretation that the Court should avoid an interpretation which may lead to surplusage or render a statutory provision redundant, we disapprove the view expressed by the learned Single Judge in **Ulli Bhaskar v. State of A.P**., (supra).

There is another reason for our disapproval of the ratio of **Ulli Bhaskar v. State of A.P.** (supra). The same clearly runs contrary to the majority decision of the Full Bench in **Ganesh Traders v. District Collector, Karimnagar** (supra) wherein it was held that possession of black jaggery meant to be used for manufacture of intoxicant is punishable under Section 34 (e) of the 1968 Act.

We may now revert to the facts of the case in hand. Admittedly, Eicher Van bearing Registration No.AP – 25T – 8212 with 60.11 quintals of black jaggery was intercepted in the outskirts of Burugupally Thanda of Jaipur Mandal, Adilabad District. On interrogation, G. Srinivas who was accompanying the vehicle on behalf of the consignor categorically stated that black jaggery was to be delivered to the I.D. manufacturers in Burugupally Thanda. He also gave out that on an earlier occasion also he supplied black jaggery in Burugupally Thanda to I.D. manufacturers. In reply to the show cause notice dated 20-1-2004 issued by the Deputy Commissioner, the representative of the petitioner informed that the jaggery had been sold on credit to Laxmi Kirana Merchants, Kataram and it was being transported with all valid documents. The Deputy Commissioner did not accept the plea of the petitioner and ordered confiscation of black jaggery. The appeal filed by the petitioner was dismissed by the Commissioner. In the writ petition filed by the petitioner, it was pleaded that by mistake the driver had, instead of going from Kamareddy to Kataram, proceeded towards

Burugupally Thanda. The learned Single Judge did not go into the merits of this plea, but remitted the case to the Commissioner for fresh consideration of its case in the light of Para 4 (iii) of Circular dated 3-11-2002. The Deputy Commissioner considered the respondent's case but rejected its plea by observing that the consignment was diverted with mala fide intention of supplying black jaggery to the I.D. manufacturers of Burugupally Thanda, which is notorious for distillation of I.D. liquor. In the second petition, the learned Single Judge did not examine the factual matrix of the case, but quashed the confiscation of black jaggery by simply observing that the petitioner's case is covered by the ratio of the judgment of another Single Bench in **Ulli Bhaskar v. State of A.P.** (supra).

In our opinion, the learned Single Judge could not have nullified the confiscation of black jaggery without recording a finding that the orders passed by the Commissioner and Deputy Commissioner suffer from any jurisdictional infirmity or violation of the rules of natural justice or are vitiated by an error of law apparent on the face of the record. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/ factors. However, a writ court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[3] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.
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> iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or

inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[4] their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawa Ltd.**[5], the Supreme Court considered the question whether in exercise power under Article 227, the High Court can interfere with the discreti exercised by the Tribunal under Section 11-A of the Act and observed :

"Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and

> substitute an award in place of the one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others**[6] the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob** (supra) has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[7]

In **Surya Dev Rai v. Ram Chander Rai**[8]**,** the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a

gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances

of the case.

> iv)The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

We are further of the view that the learned Single Judge committed serious error by nullifying the confiscation of black jaggery ignoring the law laid down by the majority of the Full Bench in **Ganesh Traders v. District Collector, Karimnagar** (supra). Undisputedly, the respondent does not have licence for manufacture, possession or sale of excisable articles. The facts brought on the record disclose that what the petitioner is said to have sold to Laxmi Kirana Merchants is jaggery weighing 60.11 quintals, though, as a matter of fact, the goods turned out to be black jaggery. The plea of the respondent that the goods were being transported from Kamareddy to Kataram and that the driver had missed the route was per se false and the Deputy Commissioner did not commit any illegality by refusing to accept the same because it is well known that Kamareddy to Kataram route is from Nizamabad to

Karimnagar whereas Burugupally Thanda, Jaipur Mandal is in Adilabad. The two places are in opposite directions i.e. south and north of Karimnagar District and, therefore, it was impossible for the driver to miss the route and take the goods to Burugupally Thanda instead of Kataram. That apart, the statement made by Sri G. Srinivas to the effect that the black jaggery was meant to be delivered at Burugupally Thanda is sufficient to negate the story set up by the respondent. For the reasons best known to it, the respondent did not file affidavit of the driver Sri G. Srinivas to controvert the observations contained in order dated 11-2-2005 passed by the Commissioner. Therefore, the inference drawn by the Deputy Commissioner that the respondent had transported the goods for being delivered to I.D. liquor manufacturers cannot be termed as erroneous or totally wide of the mark so as to warrant interference under Article 226 of the Constitution of India.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and Writ Petition No.16379 of 2005 filed by the respondent is dismissed.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

July 21, 2006

svs

Note:
Registry is requested to mark L.R. copy
(By order)
svs
PS to HCJ

[1] (2004) 1 LS 385 = (2004) ALT (Cri.) (2) 30

[2] (2002) 1 ALT 611

[3] AIR 1964 SC 477

[4] AIR 1970 SC 61

[5] (1984) 3 Supreme Court Cases 5

[6] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[7] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[8] AIR 2003 SC 3044